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IN THE

# Supreme Court of the United States

October Term, 1976

No. 76-9

**EDWARD KOLODZIEJ**, pro se,

*Petitioner.*

*vs.*

**LOCAL 697, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,**

*Respondent.*

*On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit*

## BRIEF OF RESPONDENT IN OPPOSITION

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## SUBJECT MATTER INDEX

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| | Page |
|---|---|
| CITATIONS TO OPINION BELOW | 2 |
| JURISDICTION | 2 |
| QUESTION PRESENTED | 2 |
| STATUTES INVOLVED | 2 |
| ARGUMENT | 4 |
| CONCLUSION | 5 |

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## BRIEF OF RESPONDENT IN OPPOSITION

## CITATIONS TO OPINION BELOW

The opinion of the District Court is as yet unreported. The opinion of the Court of Appeals for the Seventh Circuit is an "Unpublished Order" not to be cited pursuant to Circuit Rule 28.[1]

## JURISDICTION

The judgment of the Court of Appeals was entered on May 6, 1976. Petitioner has not recited his jurisdictional contention. We assume, however, that the jurisdiction of this Court is based upon 28 U.S.C. §1254(1). The original jurisdiction of the District Court was based upon 29 U.S.C. §187.

## QUESTION PRESENTED

Petitioner actually presents no question to which we can respond, let alone one for review. What occurred in this case was a routine trial with the District Court's findings being substantiated by the evidence, with his applying the appropriate principles of law and being sustained on appeal.

## STATUTES INVOLVED

The federal statutes involved are:

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1. Petition for Rehearing *En Banc* in the Court of Appeals was denied on July 2, 1976.



1. National Labor Relation Act, as amended, 29 U.S.C. § 187:

> Section 303 of the National Labor Relations Act provides in pertinent part that "(a) It shall be unlawful . . . in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 158(b)(4) of this title. (b) Whoever shall be injured in his business or property by reason [of] a violation of subsection (a) . . . may sue therefore in any district court."

2. National Labor Relations Act as amended, 29 U.S.C. § 158(b)(4)(i) and (ii):

> Section 8 (b) (4) provides in relevant part that "It shall be an unfair labor practice for a labor organization or its agents . . . (4)(i) . . . to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in . . . a refusal . . . to use, manufacture, . . . or otherwise handle . . . any goods . . . or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is -(A) forcing or requiring any employer or self-employed person to join any labor or employer organization . . .".

3. Norris-La Guardia Act, 29 U.S.C. § 106:

> "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

## ARGUMENT

Petitioner Edward Kolodziej ("Petitioner"), represented by counsel at the trial level, sued Respondent Local 697, International Brotherhood of Electrical Workers ("Respondent" or "Union") under Section 303 of the National Labor Relations Act (29 U.S.C. §187) alleging an illegal secondary boycott and a pendent state law claim for destruction of property. An extensive trial was held before Judge Eschbach of the Northern District of Indiana culminating in his 17 page decision of November 19, 1975, in which he awarded judgment for the Union, finding that the picketing was primary, for a lawful objective, was not violative of the National Labor Relations Act and in fact, was fully protected by same. The Court also found that the Union had not participated in the destruction of Kolodziej's property. The Court of Appeals sustained the District Court. "Construing plaintiff's pro se briefs liberally . . ." (Pet. App. 5, line 23) the Court of Appeals nevertheless found that "Plaintiff (Petitioner) raises a frivolous issue." (Pet. App. 5, line 31).

The findings of the District Court (Pet. App. 7-22) set forth in great detail, and yet concisely, the facts found by him—facts which were not attacked by Petitioner in the Court of Appeals and are not attacked in this Court. No useful purpose would be served by attempting to paraphrase them. Suffice it to say that the Court of Appeals held that, "Since neither party disputes the applicability of the National Labor Relations Act to defendant union (Respondent), the district court properly proceeded to determine whether plaintiff (Petitioner) could prove the allegations in his complaint concerning the union's violation of the National Labor Relations Act. There being no error apparent from the record, the judgment of the



district court is hereby, AFFIRMED." (Pet. App. 6, lines 7-14).

Apart from the fact that the courts below were not in error, Petitioner has presented no question of importance which this Court has not ruled upon or one where there is conflict amongst the Circuits.

## CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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July 30, 1976